

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JASON MCLEAN  
BRIAN COLEMAN,

Plaintiff,

v.

COMMUNICATIONS  
CONSTRUCTION INC.,  
BRAD DODSON,  
JONATHAN GATES AND  
MIKE FENDER,

Defendants.

C.A. No.: 06 - 617

JURY TRIAL DEMANDED

**COMPLAINT**

**THE PARTIES**

1. The plaintiffs, Jason McLean and Brian Coleman (hereinafter referred to as "plaintiff Coleman" and "plaintiff McLean") were at all times relevant to this complaint, employees of Communications Construction Group, LLC.

2. The defendant Communications Construction Group, LLC (hereinafter referred to as "defendant CCG") is a limited liability company organized and existing under the laws of the State of Delaware, whose agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. CCG is a subsidiary of Dycom Industries, Inc. The Company serves hundreds of customers in 49 states, with a workforce of over 8,200 employees based in more than 200 locations. <http://www.dycomind.com/subs/>.

3. The defendant Mike Fender, hereinafter referred to as "defendant Fender" was at all times relevant to this complaint an employee and supervisor of CCG.

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DISTRICT OF DELAWARE  
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4. The defendant Bradley Dodson, hereinafter referred to as “defendant Dodson” was at all times relevant to this complaint an employee and supervisor of CCG.

5. The defendant Jonathan Gates, hereinafter referred to as “defendant Gates” was at all times relevant to this complaint an employee.

### **JURISDICTION**

6. This Court has jurisdiction based upon the existence of a question arising under the laws of the United States of America and the State of Delaware. This action arises under Title VII, of the Civil Rights Act of 1954, 42 U.S.C. §2000e, et.seq., as amended by the Civil Rights Act of 1991, §704 of Title VII, and 42 U.S.C. §1983. Accordingly, this Court has jurisdiction over the controversy based upon the provisions of 42 U.S.C. §2000e-5(f)(3) as well as 28 U.S.C. §§1331 and 1334. In addition, the actions arises under 42 U.S.C. §1981.

### **VENUE**

7. The unlawful employment practices alleged herein were committed within the State of Delaware. Accordingly, venue lies in the United States District Court for the District of Delaware under 42 U.S.C. §1339(b).

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8. Prior to the filing of this action, the plaintiffs timely filed a written charge of racial discrimination with the Equal Employment Opportunity Commission – Philadelphia District Office and Pennsylvania Human Relations Commission on August 19, 2005 (a copy of which is attached hereto as Exhibit No. “1”), alleging the discriminatory conduct, which occurred beginning on May 31, 2005 and continued through plaintiffs’ termination constituting a continuing course of conduct by the defendants.

9. Thereafter, on June 29, 2006, the Equal Employment Opportunity Commission issued to the plaintiffs a "Right to Sue Letter" which was received by plaintiff on or about July 24, 2006 (a copy of that "Notice of Right to Sue Letter" is attached hereto as Exhibit "2").

### **FACTS**

10. Plaintiff Coleman began employment with the defendant on January 29, 2001 and was an operator and laborer of mainline pipe. Coleman was subsequently laid off and terminated.

11. Plaintiff McLean began employment with the defendant on January 29, 2001 and was an operator and laborer of mainline pipe. McLean eventually earned the position of foreman until being laid off and terminated.

12. On or around May 20, 2005 defendant Dodson stated to a group of white employees that, "At least you don't have to work with two dumb niggers!" referring to plaintiffs Coleman and McLean.

13. At the time, Dodson was defendant's direct supervisor and brother of Dave Dodson, head of CCG's New Castle, Delaware worksite.

14. One week later, on May 31, 2005, plaintiffs were informed of the slur by a co-worker.

15. Subsequently, Coleman and McLean asked Dodson if he made the remark. Whereas, Dodson jumped off a machine and continually pointed his finger in McLean's face.

16. Then Dodson started jabbing his finger against Coleman's chest to the point Coleman was moved backwards.

17. After the confrontation, Dodson called his brother Dave Dodson.

18. Dave Dodson appointed Mike Fender to handle the situation.

19. Fender's only solution to the problem was having everyone shake hands and go back to work.

20. At that time, plaintiff McLean called Human Resources and plaintiff Coleman called the police.

21. Employees Robert Cole and Joseph Tosh confirmed that Dodson made the racial slur about defendants. (5-31-05 Police Report attached as Exhibit "3").

22. Defendant Dodson was charged with offensive touching.

23. Directly after the incident, the plaintiffs were assigned low-level clean-up work.

24. Plaintiffs were assigned to a new crew with Harry Ortiz, a Hispanic minority.

25. The new crew became an instant success accumulating numbers ranging from \$400 to \$650.

26. After only three days, plaintiffs and Ortiz were transferred to a site in West Chester, Pennsylvania.

27. The transfer resulted in a substantial reduction in salary.

28. The plaintiffs made \$1.20 per square foot compared to \$2.80 per foot at the New Castle plant.

29. In addition, the transfer added approximately two (2) hours in additional driving time for the plaintiffs.

30. First, plaintiffs were given a truck to compensate for the additional driving.

31. However, Jonathan Gates, upon learning about the truck, immediately took the truck away from the plaintiffs.

32. Plaintiffs Jonathan Gates and Mike Fender informed plaintiffs that they were the root of the problem because they complained to Human Resources prior to alerting them.

33. Subsequently, the plaintiffs were laid off of work and ultimately terminated without warning.

34. Defendant Dodson never received any reprimand or consequence for his actions.

**COUNT I: RACIAL HARASSMENTDISCRIMINATION**

35. Paragraphs 1-34 are hereby incorporated as if stated in full.

36. Defendant Dodson, a supervisor for defendant CCG, called defendants niggers to a group of white employees.

37. The actions by defendants constitute racial harassment and discrimination in violation of both Federal and State law.

38. Plaintiffs' direct supervisor called them "niggers" because they were African American in front of a group of white employees.

39. The statements were followed by the defendant assaulting the plaintiffs.

40. After plaintiffs addressed the incident with their supervisors and human resources, they were subsequently "transferred" to lower paying jobs, laid off, and ultimately terminated without notice.

**COUNT II: RETALIATION**

41. Paragraphs 1-40 are hereby incorporated as if stated in full.

42. The defendants' actions towards the plaintiffs were a result of their opposition to, and claims of employment discrimination, and as such were retaliatory in violation of 42 U.S.C. §2000e-3.

43. The defendants intentionally, willfully, and wantonly retaliated against Plaintiffs in response to their complaints of racial harassment in violation of Federal and State law.

**COUNT III : EQUAL PROTECTION CLAUSE**

44. Paragraphs 1-43 are hereby incorporated as if stated in full.

45. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution forbids unjustifiable discrimination on the basis of race.

46. The defendants treated the plaintiffs differently than similarly situated employee Dodson in that the plaintiffs were transferred to lesser paying positions, laid off, and ultimately terminated for reporting that defendant Dodson called them “niggers”.

47. Defendants cannot demonstrate any justification for the fact that they discriminated against plaintiffs and cannot overcome the strong presumption that such treatment is illegal.

48. Defendants’ actions towards plaintiffs violate the Fourteenth Amendment to the U.S. Constitution.

**COUNT IV: BREACH OF COVENANT OF GOOD FAITH  
AND FAIR DEALING IMPLIED**

49. Paragraphs 1-48 are hereby incorporated as if stated in full.

50. Delaware recognizes a common law cause of action for a breach of a covenant of good faith and fair dealing implied in an at-will employment contract where employee alleges that his termination directly resulted from her refusal to succumb to sexual harassment in the workplace.

51. The defendants’ actions against the plaintiffs resulted from their lawful opposition and claims of employment discrimination and as such were retaliatory.

**COUNT V: ASSAULT AND BATTERY**

52. Paragraphs 1-51 are hereby incorporated as if stated in full.

53. During said employment with defendant CCG, an agent of Defendant, reacting to plaintiffs' inquiry as to him calling them niggers, came into physical contact with Plaintiffs.

54. Said contact was intentional, against Plaintiffs' will, without their consent and unwarranted by social usage and without business justification.

55. Further, the aforesaid unauthorized contact placed Plaintiffs in a reasonable fear that defendant would use additional force directed at plaintiffs, against their will and without consent.

56. An assault is an unlawful attempt to do violence to the person of another, with the means at hand of carrying the attempt into execution; and a battery is the unlawful commission or execution of such violence. Marker v. Hanratty, 97 A. 904. Del.Super.,1916.

57. The above constitutes unlawful assault and battery upon plaintiffs.

*[Remainder of this page left blank intentionally]*



**WHEREFORE**, Plaintiffs Brian Coleman and Jason McLean demands judgment in their favor against Defendants for compensatory damages, damages for emotional distress, damages for pain and suffering, lost wages, fringe benefits, front pay, special damages, medical expenses, costs of this action, Attorney's fees, expert fees, pre-judgment interest, post-judgment interest, and any other just and equitable relief as this Court deems proper, including an injunction permanently restraining this violation of Title VII and a directive that Defendants take such affirmative action as are necessary to ensure that the effects of these unlawful employment practices are eliminated.

**YOUNG, MALMBERG & HOWARD, P.A.**

/s/ Ronald G. Poliquin  
Ronald G. Poliquin  
30 The Green  
Dover, DE 19901  
(302) 672-5600  
Delaware Bar I.D. No. 4447  
*Attorney for Plaintiffs*

DATED: October 2, 2006



# **EXHIBIT 1**

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC

170-2005-02964

**Pennsylvania Human Relations Commission**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

**Mr. Jason A. Mc Lean**

Home Phone No. (Incl Area Code)

**(302) 363-5733**

Date of Birth

**[REDACTED]-1983**

Street Address

City, State and ZIP Code

**96 Kentwood Drive, Dover, DE 19901**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

No. Employees, Members

Phone No. (Include Area Code)

**COMMUNICATIONS CONSTRUCTION GROUP****201 - 500****(610) 696-1800**

Street Address

City, State and ZIP Code

**235 E. Gay Street, West Chester, PA 19380**

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

**05-31-2005****06-20-2005**☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I was hired with Respondent as a Laborer/Operator on January 1, 2005. On May 31, 2005, Robert Cole (White), Crew member told me and Brian Coleman (Black), Foreman, that our supervisor, Mr. Brad Dodson, talked about us badly and referred to us as being "two dumb niggers." Mr. Cloeman and I confronted Mr. Dodson to complain about the comment. Mr. Dodson denied making the statement and began jabbing Mr. Coleman in his chest and pushing him. We complained to Mr. Mike Fender, General Foreman (White), who told us to shake hands and return to work. We did not believe that addressed the situation. Mr. Coleman called the police to file charges against Mr. Dodson and he was arrested for offensive touching. Later, we contacted Ms. Lisa Clemons, Human Resources Manager (White), to advise her of what occurred and to formally complain about the harassment. On June 11, 2005, Mr. Coleman and I received a write-up for not following company policy and leaving the work area. We were accused of harassing Mr. Dodson and that we should have gone to a higher authority to make our complaint and come to Human Resources before calling the police. On June 20, 2005, Mr. Coleman and I were transferred to another area that pays less than we were receiving. While at the new location, the new supervisor gave us a truck. Mr. John Gates, Regional Supervisor (White), told the new supervisor to take the truck away from us.

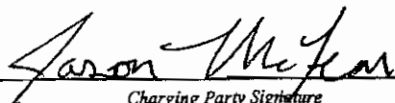
I believe that I and Mr. Coleman were discriminated against because of our race (Black) and retaliated against for complaining of the race discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

**Aug 19, 2005**

Date



Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

## **EXHIBIT 2**

EEOC Form 161 (10/96)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: Mr. Jason A. McLean  
96 Kentwood Drive  
Dover, DE 19801

From: Equal Employment Opportunity Commission  
Philadelphia District Office  
The Bourse  
21 S. Fifth Street, Suite 400  
Philadelphia, PA 19106-2515

☐ On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR § 1601.7(a))

| Charge No.     | EEOC Representative | Telephone No.  |
|----------------|---------------------|----------------|
| 170-2005-02964 | Legal Unit          | (215) 440-2828 |

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ We cannot investigate your charge because it was not filed within the time limit required by law.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You had 30 days to accept a reasonable settlement offer that afford full relief for the harm you alleged.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

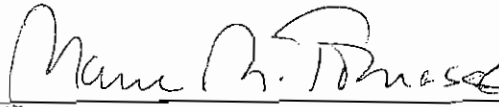
## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

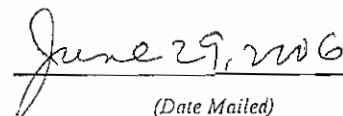
Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS from your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission



Marie M. Tomasso, District Director



(Date Mailed)

Enclosure(s)

cc: Communications Construction Group  
Thomas Benjamin Huggett, Esquire (For Respondent)

FORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: backpay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/96 to 12/1/96, you should file suit before 7/1/98 -- not 12/1/98 -- in order to recover unpaid wages due for July 1996. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA backpay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please **make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

***IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.***

## **EXHIBIT 3**



|  |                         |  |   |
|--|-------------------------|--|---|
| Page: 1  | Report Date: 05/31/2005 | Agency: New Castle County PD   | Complaint: 32-05-066101   |
| Reported Date and Time<br>TUE 05/31/2005 1535  |                         | Initial Crime Report   |   |
| Location:<br>cunane CIR forest ridge Newark, DE 19702<br>AT ENTRE LANE   |                         |  |   |
| M.O. and Incident Overview:<br>Victim reported that Suspect pointed his finger at Victim and poked him in the chest with his fingers during an argument over a racial epithet made by Suspect last week. |                         |  |   |
| Grid<br>050-330  | Sector<br>34            | County<br>New Castle   | Domestic Related<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 4-F-14 Sent?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |                         | Gen Broadcast Sent?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |   |

## Victim Information

|  |  |   |                                  |
|--|--|---|----------------------------------|
| Victim Number<br>001   | Name<br>COLEMAN, BRIAN T   |   |                                  |
| Type<br>Individual   | Sex<br>Male  | Race<br>Black   | Ethnic Origin<br>Non-Hispanic    |
| Age<br>32  |  | D.O.B.<br>[REDACTED] 972  |                                  |
| Address<br>20 tarpon CT<br>WILLINGBORO, NJ 08046   |  | Resident Status<br>Full Time  | Home Telephone<br>(609) 871-3763 |
| Employer/School<br>COMMUNICATIONS CONSTRUCTION GR  |  | Work Telephone<br>(302) 322-7972  |                                  |
| Reporting Person?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Victim Injured?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Victim Deceased?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Officer Comments                 |
| Injuries   |  | Description of Injuries   |                                  |

## Suspect/Defendant Information

|   |                                |                               |                                  |  |                  |                       |                                  |                   |
|---|--------------------------------|-------------------------------|----------------------------------|--|------------------|-----------------------|----------------------------------|-------------------|
| Sequence<br>001   | Type<br>Suspect                | SBI Number                    | Name<br>DODSON, BRADLEY          |  | Nick Name        |                       |                                  |                   |
| Sex<br>Male   | Race<br>White                  | Ethnic Origin<br>Non-Hispanic | Age<br>33                        | D.O.B.<br>[REDACTED]/1971  | Height<br>6' 03" | Weight<br>210         | Skin Tone                        | Eye Color<br>Blue |
| Hair Color<br>Brown                                     | Hair Length                    | Hair Style                    | Facial Hair                      | Voice Speech   | Teeth            | Build                 | Glasses                          |                   |
| Disguise  |                                | Disguise Color(s)             | Resident Status<br>Full Time     | Unusual Characteristics  |                  | Armed With<br>Unarmed |                                  |                   |
| Address<br>1021 puzzletown RD<br>DUNCANSVILLE, PA 16635 |                                |                               | Home Telephone<br>(302) 322-7972 | Employer/School<br>COMMUNICATIONS CONSTRUCTION GRP<br>700 LARKINS ST<br>New Castle, DE 19720 |                  |                       | Work Telephone<br>(302) 322-7972 |                   |
| Arrest Number   | Suspect's Clothing Description |                               |                                  |  |                  |                       |                                  |                   |

## Crimes and Associated Information

|  |                  |   |   |
|--|------------------|---|---|
| Victim Number<br>001   | Crime Seq<br>001 | Statute<br>DE:11:0602:000A:M:   | Crime Description<br>Menacing   |
| Location Of Offense<br>Construction Site   |                  | Status<br>No Victim cooperation 05/31/2005                              | Involvement<br><input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computer  |
| General Offense  |                  |   |   |
| Suspected Hate/Bias<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No - N/A |                  | Hate Bias Type<br>Anti Black  | Crime Code<br>13164E - Intimidation/Reckless Endanger/Terroristic Threat/Harassment/Other Assaults/Non-Aggravated |
| Burglary Force Involved<br><input type="checkbox"/> Yes <input type="checkbox"/> No              |                  | Weapon/Force Used<br>Personal Weapons/Hands/Feet                        |   |
| Victim Number<br>001   | Crime Seq<br>002 | Statute<br>DE:11:0601:00a1:M:   | Crime Description<br>Offensive Touching   |
| Location Of Offense<br>Construction Site   |                  | Status<br>No Victim cooperation 05/31/2005                              | Involvement<br><input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computer  |
| General Offense  |                  |   |   |
| Suspected Hate/Bias<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - N/A |                  | Crime Code<br>13134E - Offensive Touching/Other Assaults/Non-Aggravated |   |
| Burglary Force Involved<br><input type="checkbox"/> Yes <input type="checkbox"/> No              |                  | Weapon/Force Used<br>Personal Weapons/Hands/Feet                        |   |
| M. O. Information<br>MO Class<br>Suspect's General Actions                                       |                  | MO Description<br>POINTED FINGER  |   |
| MO Class<br>Type of Weapon Used  |                  | MO Description<br>HANDS   |   |

## Victim - Suspect/Defendant Relationships

|                                  |  |   |
|----------------------------------|--|---|
| Victim - 001<br>COLEMAN, BRIAN T | Suspect/Defendant - 001<br>DODSON, BRADLEY | Victim Offender Relationship<br>Otherwise Known |
|----------------------------------|--|---|

## Witness Information

|   |                 |                                  |  |               |                |                           |
|---|-----------------|----------------------------------|--|---------------|----------------|---------------------------|
| Sequence<br>001                           | Type<br>Witness | Name<br>MCLEAN, JOSEPH G         | Sex<br>Male  | Race<br>White | Age<br>46      | D.O.B.<br>[REDACTED] 1958 |
| Address<br>hcl box 78<br>MADERA, PA 16661 |                 | Home Telephone<br>(814) 378-5436 | Employer/School<br>COMMUNICATIONS CONSTRUCTION GR                    |               | Work Telephone |                           |
| Sequence<br>003                           | Type<br>Witness | Name<br>KOCH, MICHAEL B          | Sex<br>Male  | Race<br>White | Age<br>36      | D.O.B.<br>[REDACTED] 1968 |
| Reporting Officer<br>OFC MEYER - 2582 2   |                 |                                  | Supervisor Approval<br>EUGENE J MCKENNA OJNCEJM Date 05/31/2005 1822 |               |                |                           |



|         |                         |                          |                         |
|---------|-------------------------|--------------------------|-------------------------|
| Page: 2 | Report Date: 05/31/2005 | Agency: Castle County PD | Complaint: 32-05-066101 |
|---------|-------------------------|--------------------------|-------------------------|

Sequence  
003 Continued

## Witness Information

|   |                 |                                  |   |                |
|---|-----------------|----------------------------------|---|----------------|
| Address<br>219 wallingford AVE<br>WALLINGFORD, PA 19086 |                 | Home Telephone<br>(484) 368-1498 | Employer/School<br>COMMUNICATIONS CONST GROUP | Work Telephone |
| Sequence<br>005   | Type<br>Witness | Name<br>KRAKOWSKI, FRANK         | Sex<br>Male                                   | Race<br>White  |
| Address<br>rd 1 box 229<br>ROARING SPRING, PA 16673     |                 | Home Telephone<br>(814) 224-2197 | Employer/School<br>COMMUNICATIONS CONST GROUP | Age<br>46      |
|   |                 |                                  |   | D.O.B.<br>958  |

## Investigative Narrative

On the above date and time I responded to the above location in reference to a possible hate crime incident. Ofc. Falkenburg responded as well and was able to interview the Victim in the incident as well as some of the witnesses. I made contact with the suspect obtaining his account of what had transpired and then met with Ofc. Falkenburg to brief same. I spoke briefly with Victim who had expressed concern over what transpired. I also spoke briefly with W-1 (Koch) who corroborated Victims account with respect to being present when Suspect made the racial statement. Due to the nature of this incident I made contact with Sgt. Gregory advising him of what we had learned which was that a racial slur was made by Suspect towards Victim last week (believed to be on Friday). Victim was advised of what had been said by Suspect and upon hearing same went to speak with Suspect about the matter. Victim had apparently just learned of the statement made by Suspect today's date as the witnesses to same did not say anything on Friday. Victim had concerns over going to the manager as the manager for the site is the suspects' brother. Victim advised that the incident turned into an argument and that Suspect had poked him in the chest. I contacted Deputy AG S. Walther and briefed him on what had transpired and the concerns. I was advised that the matter based upon the offense was a misdemeanor offensive touching not in our presence and therefore Victim could be given a copy to sign warrants. Deputy AG Walther advised that the hate crime status would amplify the charges from unclassified misdemeanor to a class A misdemeanor and was not an actual separate offense believing that there was a flag that could be checked to document same. Based upon the interviews conducted by Officer Falkenburg and myself one offense of menacing was added to this complaint. I made contact with Sgt. Gregory advising him of the conversation with Dep. Ag Walther at which time he contacted Lt. McGowan briefing him on same. I made contact with Pc Fender who is the site manager and educated him on future issues as well as the actions we would be taking today's date. Victim was provided with the complaint information and referred to Jp court to sign warrants. Based upon the investigation it was learned that this incident stemmed from a statement made by Suspect last week which was racial in nature therefore making same a potential hate crime and documented as such. No further action taken by this officer reference this incident at this time. For additional refer to Officer Falkenburg's supplement as interviews were conducted by same and the exact nature of the statement was relayed to him and then told to me.

## Statement of Suspect 001 - BRADLEY DODSON

Bradley advised that Brian and Jason approached him while he was on the hill drilling. He advised that some guy told them that he called them a nigger. He advised that he supposedly said it last week. (He did not admit or deny making the statement at this time). He advised that they first went to Frank and then to him. He advised that they were yelling at him asking him what he said and claimed that Brian was in his face screaming. He advised that he told them he did not know what they were talking about and called a supervisor at which time he was shaking his finger. He claimed that Brian told him not to point at him however he did so at which time Brian approached him still upset. He advised that he poked Brian in the chest 2-3 times with his fingers at which time Brian poked him back claiming that he should not have done same. He detailed the incident a little better advising that he was up on the hill drilling when Brian came up on a Kubota. He advised that they started yelling at Frank about what they were saying calling them Niggers. He advised that he had no idea what they were talking about and then got on the phone calling Dave (Manager to come over right away. He called Mike the field supervisor and while he was doing so Brian was in front of him with Jason there as well. Brian was making some kind of statement in reference to his hands being lethal. Brian told him not to point his finger at him, however he continued to do so at which point Mike came at him. He poked Brian in the chest with his fingers 2-3 times in the chest adding that he probably should not have done that, however Brian then poked him back.

|         |                         |                              |                         |
|---------|-------------------------|------------------------------|-------------------------|
| Page: 3 | Report Date: 05/31/2005 | Agency: New Castle County PD | Complaint: 32-05-066101 |
|---------|-------------------------|------------------------------|-------------------------|

## Statement of Suspect 001 - BRADLEY DODSON - Continued

He understood that warrants could be signed for his arrest by Victim and that there were subjects present who heard him make the statement.

|   |  |  |  |
|---|--|--|--|
| Reporting Officer<br>OFC MEYER - 2582 2 |  | Supervisor Approval<br>EUGENE J MCKENNA OJNCEJM Date 05/31/2005 1822         |  |
| Detective Notified                      |  | Referred To  |  |
| Solvability Factors                     | <input type="checkbox"/> Witness<br><input type="checkbox"/> Suspect Located | <input type="checkbox"/> M. O.<br><input type="checkbox"/> Suspect Described | <input type="checkbox"/> Trace Stolen Property<br><input type="checkbox"/> Suspect Identified<br><input type="checkbox"/> Suspect Named<br><input type="checkbox"/> Suspect Vehicle Identified |
|   |  |  | Status<br>Has Follow Up  |

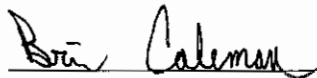
**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|                              |   |                     |
|------------------------------|---|---------------------|
| JASON MCLEAN                 | ) |                     |
| BRIAN COLEMAN,               | ) |                     |
|                              | ) |                     |
| Plaintiff,                   | ) |                     |
|                              | ) |                     |
| v.                           | ) | C.A. No.:           |
|                              | ) |                     |
| COMMUNICATIONS               | ) |                     |
| CONSTRUCTION GROUP INC.,     | ) |                     |
|                              | ) |                     |
| AND MIKE FEDER, BRAD DODSON, | ) |                     |
| and JOHNATHAN GATES,         | ) | JURY TRIAL DEMANDED |
|                              | ) |                     |
| Defendants.                  | ) |                     |

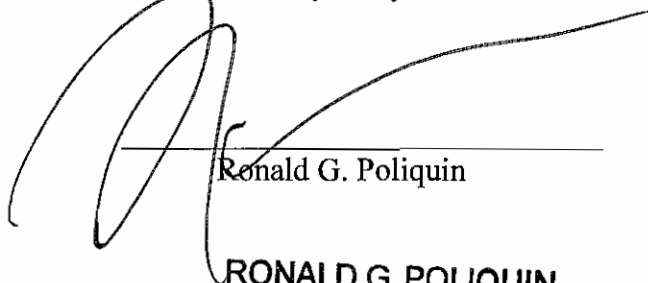
**AFFIDAVIT OF VERIFICATION**

STATE OF DELAWARE :  
: SS.  
KENT COUNTY :

BE IT REMEMBERED that on this 28 day of September 2006 personally appeared before me, Brian Coleman, Plaintiff in the captioned action, who being duly sworn by me, a Notary Public, did depose and say that the facts recited in the attached Complaint are true and correct to the best of her knowledge and belief.

  
\_\_\_\_\_  
Brian Coleman

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

  
\_\_\_\_\_  
Ronald G. Poliquin

DATED: 9-28-06

**RONALD G. POLIQUIN  
ATTORNEY AT LAW  
MEMBER OF THE DELAWARE BAR**

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

06-617

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

|  |  |
|--|--|
| <b>I. (a) PLAINTIFFS</b> <u>McLean, Jason and Coleman, Brian</u><br><b>(b) County of Residence of First Listed Plaintiff</b> <u>Kent</u><br><small>(EXCEPT IN U.S. PLAINTIFF CASES)</small><br><br><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> <u>Ronald G. Poliquin</u><br><u>30 The Green</u><br><u>Dover, DE 19901</u> <u>(302) 672-5600</u> | <b>DEFENDANTS</b> <u>Communications Construction Inc., Bradley Dodson, Jonathan Gates, Mike Fender</u><br><br><b>County of Residence of First Listed Defendant</b> <u>New Castle</u><br><small>(IN U.S. PLAINTIFF CASES ONLY)</small><br>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.<br><br><b>Attorneys (If Known)</b> |
|--|--|

|  |   |  |   |
|--|---|--|---|
| <b>II. BASIS OF JURISDICTION</b> <small>(Place an "X" in One Box Only)</small><br><input type="checkbox"/> 1 U.S. Government Plaintiff<br><input checked="" type="checkbox"/> 3 Federal Question <small>(U.S. Government Not a Party)</small><br><input type="checkbox"/> 2 U.S. Government Defendant<br><input type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small> | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <small>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</small><br><small>(For Diversity Cases Only)</small><br><table style="width:100%"> <tr> <td style="width:50%">           Citizen of This State <input checked="" type="checkbox"/> 1<br/>           Citizen of Another State <input type="checkbox"/> 2<br/>           Citizen or Subject of a Foreign Country <input type="checkbox"/> 3         </td> <td style="width:50%">           DEF <input type="checkbox"/> 1<br/>           Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2<br/>           Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 2<br/>           Foreign Nation <input type="checkbox"/> 3         </td> </tr> </table> | Citizen of This State <input checked="" type="checkbox"/> 1<br>Citizen of Another State <input type="checkbox"/> 2<br>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 | DEF <input type="checkbox"/> 1<br>Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2<br>Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 2<br>Foreign Nation <input type="checkbox"/> 3 |
| Citizen of This State <input checked="" type="checkbox"/> 1<br>Citizen of Another State <input type="checkbox"/> 2<br>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3   | DEF <input type="checkbox"/> 1<br>Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2<br>Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 2<br>Foreign Nation <input type="checkbox"/> 3   |  |   |

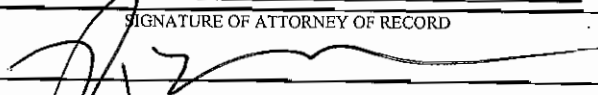
| IV. NATURE OF SUIT <small>(Place an "X" in One Box Only)</small>   |  |   |  |   |
|--|--|---|--|---|
| <b>CONTRACT</b><br><input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <small>(Excl. Veterans)</small><br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>TORTS</b><br><b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><br><b>PERSONAL INJURY</b><br><input type="checkbox"/> 362 Personal Injury - Med. Malpractice<br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <b>FORFEITURE/PENALTY</b><br><input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R.R. & Truck<br><input type="checkbox"/> 650 Airline Regs.<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other<br><br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <b>BANKRUPTCY</b><br><input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <b>OTHER STATUTES</b><br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property   | <b>CIVIL RIGHTS</b><br><input checked="" type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 444 Welfare<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 440 Other Civil Rights  | <b>PRISONER PETITIONS</b><br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><b>Habeas Corpus:</b><br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition  |  |   |

|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
| <b>V. ORIGIN</b> <small>(Place an "X" in One Box Only)</small><br><input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |  |  |  |  |  |  |
|--|--|--|--|--|--|--|

|                            |  |
|----------------------------|--|
| <b>VI. CAUSE OF ACTION</b> | Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):<br>Brief description of cause: <u>Title VII 42 U.S.C. 2000e, 1903, 1901</u> |
|----------------------------|--|

|                                     |   |
|-------------------------------------|---|
| <b>VII. REQUESTED IN COMPLAINT:</b> | <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23            DEMAND \$ _____            CHECK YES only if demanded in complaint:<br>JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
|-------------------------------------|---|

|                                     |   |
|-------------------------------------|---|
| <b>VIII. RELATED CASE(S) IF ANY</b> | (See instructions): JUDGE _____ DOCKET NUMBER _____ |
|-------------------------------------|---|

|                     |  |                     |
|---------------------|--|---------------------|
| DATE <u>10/2/06</u> | SIGNATURE OF ATTORNEY OF RECORD  | FOR OFFICE USE ONLY |
|---------------------|--|---------------------|

|                 |              |                    |             |                  |
|-----------------|--------------|--------------------|-------------|------------------|
| RECEIPT # _____ | AMOUNT _____ | APPLYING IFP _____ | JUDGE _____ | MAG. JUDGE _____ |
|-----------------|--------------|--------------------|-------------|------------------|



AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware



Civil Action No. 06-617 UNA

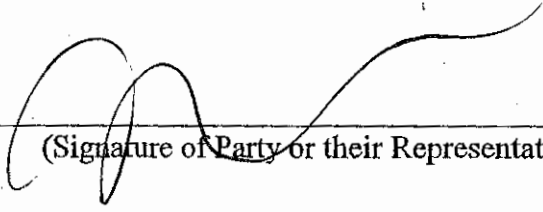
**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 4 COPIES OF AO FORM 85.

10-3-06

(Date forms issued)

  
(Signature of Party or their Representative)

Ronald G. Poliquin, Esquire

(Printed name of Party or their Representative)

**Note: Completed receipt will be filed in the Civil Action**